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Daily News

Industry Says 'Little Additional Regulation' Justified Under Power Plant ELG

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Industry groups say nearly all waste treatment requirements in EPA's upcoming effluent limitation guideline (ELG) for power plants are not cost effective, arguing the agency can justify 'little additional regulation' for most waste streams identified in the proposal and should continue to allow impoundments or settling ponds as a treatment option.

Electricity generators in recent comments on the proposal say EPA significantly underestimated the costs to install treatment technology but overestimated the pollutant loadings in facilities' liquid discharges. Several groups say the agency should re-open the rulemaking, accept further public comment and re-propose a "reasonable set of proposed requirements."

EPA appears unlikely to agree with industry's call to limit new regulation. An Aug. 20 presentation by EPA about the rule says, "the requirements are based on proven control technologies to reduce these discharges . . . that are widely available." And an [EPA water official](#) said the strongest of the agency's preferred options likely would not cause any plants to close and that only 19 percent of power plants, or 200 facilities, would incur compliance costs.

Environmentalists, who have previously threatened litigation over the rule, continue to push EPA to choose an even stronger option, saying the two most stringent options of the eight being considered clearly meet the best available technology (BAT) standard identified in the Clean Water Act (CWA).

Industry groups in their comments also urge EPA to consider the overall effect of a suite of new water, air and waste rules for the power sector, specifically calling on the agency to coordinate CWA effluent requirements with the pending Resource Conservation and Recovery Act (RCRA) coal ash rule.

And industry, environmentalists and some states ask EPA to reject an option that would allow local regulators to use their best professional judgment (BPD) to set limits, arguing such a move would be a resource drain for states and would create uncertain limits because permits could be challenged more easily by both facilities and outside groups.

EPA's pending ELG would update 1982 standards to limit liquid discharges from coal and other power plants. Environmentalists say the measure, along with the coal ash regulations, are needed to curtail releases that have become increasingly toxic due to emissions controls required by EPA's Clean Air Act rules. Under terms of a consent decree with environmentalists, the agency is required to issue a final rule by May 22, 2014.

Industry's Concerns

But industry groups fear the ELG and RCRA rules, as well as pending measures for cooling water structures and greenhouse gas emissions, will impose a costly new set of requirements just as they are starting to implement the agency's recently completed air rules.

"Where appropriate and feasible, agencies should consider *cumulative effects* and opportunities for regulatory harmonization as part of their analysis of particular rules, and should carefully assess the appropriate content and timing of rules in light of those effects and opportunities," says the American Public Power Association in [Sept. 20 comments](#), citing a January 2011 executive order and March 2012 memo from the Obama administration.

Regarding the effluent limits, the industry coalition known as the Utility Water Act Group (UWAG) says in [Sept. 20 comments](#) that, "The 'cost-effectiveness' analyses, especially as corrected by UWAG's own work, show that for most wastestreams little additional regulation can be justified as cost effective."

A study by Boston-based NERA Economic Consulting performed for the [American Coalition for Clean Coal Electricity](#) says the strongest of EPA's 'preferred' alternatives would cost the industry \$2.09 billion per year, compared to the agency's estimate of \$948 million. The strongest overall option, which environmentalists prefer, would cost \$4.85 billion according to the study, compared to a \$2.28 billion EPA estimate.

UWAG says the agency especially cannot adopt dry handling technologies that environmentalists support for many waste streams.

"In no case has an adequate record been compiled to support such options," the comments say. "Because of the high cost of no-discharge options and the relatively small incremental amounts of pollutants they remove, EPA cannot require them on the record as it now stands."

The Edison Electric Institute (EEI) adds in [Sept. 20 comments](#): "Taking into account the industry's comments, and based on the improved record, we encourage EPA to re-propose the steam-electric ELG rule with a more accurate and reasonable set of proposed requirements. In turn, EPA should take further comment on the revised proposal before adopting a final rule."

'Achievable' Rules

But a coalition of environmental groups says EPA must select one of two strict options, even though the agency is unlikely to move forward with the strongest alternative because it argues the option could violate the CWA requirement that such rules are "economically achievable."

"If EPA finalizes any of these weaker options . . . it will fail to control billions of pounds of pollution, possibly for decades to come," says [Sept. 20 comments](#) from a collection of environmental groups including Environmental Integrity Project (EIP), Sierra Club, Earthjustice and Waterkeeper Alliance.

"EPA's underlying record for this rulemaking provides detailed analysis confirming that coal plants can shift away from leaking and unsafe impoundments to better and safer pollution controls."

Environmentalists have said multiple times that selecting a weaker option would invite a lawsuit, with Waterkeeper Alliance President Robert Kennedy Jr. saying on a July 23 conference call that his group would "definitely sue" in such a situation. Eric Schaeffer, executive director of EEP, called such litigation a "no-brainer."

The proposed rule includes eight possible technology-based alternatives, with four designated as "preferred options," for reducing the discharge of contaminants in wastewater from recent technologies designed to reduce the amount of contaminants in air emissions. The waste streams include flue gas desulfurization (FGD) units also known as scrubbers, fly ash transport water, bottom ash transport water, combustion residual leachate, flue gas mercury control (FGMC) systems wastewater, gasification wastewater and nonchemical metal cleaning wastes.

Three of the agency's preferred alternatives were added by the White House Office of Management & Budget, according to a red-line version of the proposal posted in the docket. Two of those options contain exemptions for smaller plants, and they all generally allow weaker requirements, such as the continued use of settling ponds.

States are urging EPA to reject the use of BPL decisions as the basis for controls of scrubber wastewater. "Most states lack the personnel and technical resources needed to undertake a BPL analysis on a site-specific basis, including assessing performance of wastewater treatment technologies and developing cost estimates of various options, both of which EPA has done," the Association of Clean Water Administrators (ACWA) says in [Sept. 20 comments](#).

The Missouri Department of Natural Resources says in [Sept. 19 comments](#) that it supports the two stricter "preferred" options "because they do the most to advance the fundamental goal of the [National Pollutant Elimination Discharge System] program by eliminating discharges from impoundments." It adds: "Impoundments are an out of date technology that do not reflect achievable pollution controls."

Both Missouri and ACWA echo industry concerns that biological treatment of FGD waste might not be "an appropriate standard for a well-operated facility, which would justify inclusion in a BAT standard." In that case, states say, EPA should rely only on chemical precipitation instead of a combination of the two technologies.

UWAG argues that chemical precipitation "may be cost-effective for some plants with a maximum design flow rate of 200 [gallons per minute], but it is not cost-effective below that threshold." It says biological treatment and zero-liquid discharge methods are not cost-effective.

Proposed Limits

UWAG says impoundments should be allowed for fly ash, bottom ash, combustion residual leachate and FGMC wastewater. It also does not support any of the proposed limits for gasification wastewater but agrees with EPA's proposal to maintain current limits for nonchemical metal cleaning wastes.

EPA also proposed proposed best management practices for coal ash ponds to prevent catastrophic releases like the 2008 failure of the Tennessee Valley Authority plant in Kingston, TN. Both UWAG and ACWA argue such measures are unnecessary because the issue is being addressed through the pending RCRA regulations.

Though UWAG does not oppose EPA's "voluntary incentives" giving facilities additional time to go beyond ELG requirements, it says they "are unlikely to do much good because they are too limited." The incentives focus on closing impoundments or eliminating all process water except cooling water. UWAG says incentives focused on individual waste streams would "encourage progress" at plants that cannot close all ponds or entirely eliminate process water.

UWAG also opposes EPA's proposal to monitor wastewater limits inside a facility, before waste streams are mixed together, instead of at a final outfall. The group says the provision is counter to EPA's goal of centralized waste treatment and would discourage some recycling, such as when bottom ash water is later used as makeup water for scrubbers.

Also, EEI says the recent U.S. Court of Appeals for the 8th Circuit decision in *Iowa League of Cities v. EPA* shows that the agency does not have authority to set internal limits before a discharge enters a water that falls under the jurisdiction of the CWA. -- *Lee Logan*

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